

MINUTE ENTRY CR- 04-00027-002
9:50 a.m.

January 13, 2005

UNITED STATES OF AMERICA -v- XU, YU YAO

PRESENT: HON. ALEX R. MUNSON, Chief Judge Presiding
SANAE SHMULL, Court Reporter
MICHELLE C. MACARANAS, Deputy Clerk
JAMIE BOWERS, Assistant U. S. Attorney
MARK SMITH, Court-Appointed Counsel for Defendant
XU, YU YAO, Defendant

PROCEEDING: SENTENCING

Defendant was present with his court appointed counsel, Attorney Mark Smith. Government by Jamie Bowers, AUSA. Also present was Tracey Perez from the U.S. Probation Office.

Hua (Mike) Yang was present and sworn as Interpreter/Translator of the Mandarin language.

No objection by the government of the presentence report. Counsel for defendant had no objections but stated some clerical errors. The Court made all necessary changes to the report.

Court adopted the presentence investigation report in its entirety and instructed the Clerk to file the report, under seal, and that the report be made available if the judgment is appealed. The probation officer's recommendation shall also be placed under seal. No objection by the parties.

Government recommended that the sentencing should be at the upper level of the guideline range. Defense recommended that the defendant be sentenced on the low-end of the guideline range. The defendant stated his allocution.

SENTENCE: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant XU, YU YAO is hereby sentenced to 78 months as to Count I; 78 months as to Count II (with credit for time already served). The sentences are ordered to be served concurrently. The defendant is sentenced to supervised release for a term of four (4) years as to Count I and three (3) years as to Count II. The term of supervised release shall be served concurrently. The term of supervised release will commence immediately and will require that the defendant comply with the following conditions:

1. That the defendant shall be delivered to a duly authorized immigration official for deportation proceedings pursuant to 18 U.S.C. Â§3583(d), and with the established procedures provided by the Immigration and Naturalization Act under 8 U. S.C. Â§1101. As a further condition of supervised release, if ordered deported, the defendant shall remain outside and shall not re-enter the United States and all of its possessions and territories without the permission of the United States Attorney General. If deportation fails to occur and the defendant is pending further immigration proceedings, he shall immediately report to the U.S. Probation Office to begin his term of supervised release;

2. That the defendant shall obey all federal, state, and local laws;

3. That the defendant shall not use or possess illegal controlled substances and shall submit to one urinalysis test within 15 days of release from custody and to two more urinalysis thereafter;

4. That the defendant shall not possess a firearm or other dangerous weapon or have it where he resides;

5. That the defendant shall cooperate in the collection of DNA as directed by the U.S. Probation Office;

6. That the defendant shall comply with the standard conditions of supervised release as set forth by the U.S. Sentencing Commission;

7. That the defendant shall perform 300 hours of community service under the direction of the U.S. Probation Office.

All fines are waived due to the inability of the defendant to pay. Further, the defendant was ordered to pay the assessment fee of \$100 due immediately after sentencing.

No objection to the sentence by the attorneys. Defendant was advised that he had ten days in which to appeal his sentence. Further, the defendant was advised of his right to an attorney for appeal. The defendant is remanded back into the custody of the U.S. Marshal.

Adj 10:15 a.m.

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Applies to: DFT Xu, Yu Yao [MCM EOD 01/14/2005]